

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:04CR337
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
GILBERT GIBREAL, JR.,)	
)	
Defendant.)	

The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Addendum).¹ The government has adopted the PSR. (Filing No. 87.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Defendant objects to the following:

1. ¶ 11 - the government’s version of the offense. The objection is denied as the Court is not at liberty to change a party’s version of the offense
2. ¶ 16 - information from Inspector Mitchell. It is not stated that the objections has an effect on the guideline calculation. The objection is denied without prejudice to reassertion if the Defendant shows a connection to the guideline calculation.

¹The objections have not been filed pursuant to ¶ 6 of the order on sentencing schedule. However, the objections will be briefly addressed.

3. ¶ 18 - Inspector Mitchell's information. The objection is denied, as the paragraph summarizes information stated by Inspector Mitchell. The Defendant's statement is noted.
4. ¶¶ 19, 20, 23 - information from reports of an interview of a cooperating individual. The objection is denied without prejudice to reassertion if the Defendant shows a connection to the guideline calculation.
5. ¶ 30 - probation officer's opinion regarding recidivism. The objection is denied, as this is merely an opinion and has no guideline significance.
6. ¶¶ 27, 35 - the loss amount. The objection will be heard at sentencing. The government bears the burden of proof by a preponderance of the evidence.
7. ¶ 79 - information from Defendant's sister. The objection is denied, as this is an individual's opinion.

IT IS ORDERED:

1. The Defendant's Objection to ¶¶ 27 and 35 of the PSR will be heard at sentencing. Otherwise, the Court's Tentative Findings are that the Defendant's objections to ¶¶ 16, 19, 20 and 23 of the Presentence Investigation Report are denied without prejudice as stated above and Defendant's objections to ¶¶ 11, 18, 30 and 79 are denied;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the

submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 11th day of July, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge